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Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1538

JOHN BLANK, *et al.*,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The United States suggests that there is no conflict between the holding of the Sixth Circuit in the case at bar, *United States v. Blank*, 459 F.2d 383, and the holding of the Seventh Circuit in *Hill v. Philpott*, 445 F.2d 144, certiorari denied, 404 U.S. 991. In support of this suggestion the Government attempts to distinguish the two cases. However, the Government's suggestion that the holdings are distinguishable is directly contradicted by the Sixth Circuit in its opinion below.

It was clear to the Sixth Circuit that in order to reverse the trial court it must reject the holding in *Philpott*. In reference to the *Philpott* case, the Sixth Circuit states, "We reject the rationale which underlies the majority decision of the Seventh Circuit—at least as

it applies to our instant case." *United States v. Blank, supra*, 459 F.2d at 385.

All of the authorities cited by the Government to this Court in support of Government's suggestion that the two holdings can be distinguished were also cited to the Sixth Circuit in the Government's brief below. Considering these authorities and an argument identical to the one set forth in the Memorandum for the United States in opposition herein, the Sixth Circuit clearly indicated that its holding is in direct conflict with the holding in *Philpott*.

The conflict which exists between the Sixth Circuit and the Seventh Circuit involves an area of fundamental constitutional law. This Court should not permit the Fifth Amendment rights of an accused to vary from circuit to circuit.

By reason of the foregoing, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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